

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

U.S. Serial No.: : 08/944,234 Confirmation No.: : 1173  
Applicant : Bryan, Vincent et al.  
Filed : October 6, 1997  
Title : DRILL HEAD FOR USE IN PLACING AN INTERVERTEBRAL  
DISC DEVICE  
TC/Art Unit : 3727  
Examiner: : Lien M. Ngo  
  
Docket No. : 64118.000044  
Customer No. : 21967

**RECEIVED**

MAR 16 2004

TECHNOLOGY CENTER R3700

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**REVOCATION AND APPOINTMENT OF NEW POWER OF ATTORNEY**

Sir:

SDGI Holdings, Inc. ("Assignee"), a corporation organized and existing under the laws of the state of Delaware, having a place of business at 300 Delaware Avenue, Suite 508, Wilmington, DE 19801 is assignee of the total interest in the above-captioned patent application pursuant to an Assignment to SDGI Holdings, Inc., which followed the merger of Medtronic Sofamor Danek, Inc. and Spinal Dynamics Corporation. *See Exhibits A and B, respectively.* Both instruments are being recorded in the assignment records of the Patent Office.

Pursuant to 37 C.F.R. § 3.73(b), the undersigned, who is empowered to act on behalf of the Assignee, hereby declares that he has reviewed the evidentiary documents of the chain of title and certifies that, to the best of Assignee's knowledge and belief, title to the above-captioned patent application is with the Assignee.

Assignee hereby revokes any and all previous Powers of Attorney and hereby appoints, both jointly and severally, as its attorneys and agents with full power of substitution and revocation, to prosecute said patent application, including any and all continuation, divisional, renewal, substitute, reexamination and reissue applications based in whole or in part on said

application, before the U.S. Patent and Trademark Office, to transact all business in the U.S. Patent and Trademark Office connected therewith, including receiving any Letters Patent issuing thereon, and to take any and all other legal action with regard to this patent application, the following attorneys and agents of the firm of Hunton & Williams LLP:

Stanislaus Aksman, Reg. No. 28,562; Jennifer A. Albert, Reg. No. 32,012; Thomas E. Anderson, Reg. No. 37,063; David E. Baker, Reg. No. 42,285; Carl L. Benson, Reg. No. 38,378; Thomas D. Bradshaw, Reg. No. 51,492; J. Robert Brown, Jr., Reg. No. 45,438; Brian M. Buroker, Reg. No. 39,125; Christopher C. Campbell, Reg. No. 37,291; Katherine S. Chang, Reg. No. 40,544; Trevor Q. Coddington, Reg. No. 46,633; Christopher J. Cuneo, Reg. No. 42,450; Ryan S. Davidson, Reg. No. 51,596; Patrick A. Doody, Reg. No. 35,022; Kevin T. Duncan, Reg. No. 41,495; Ozzie A. Farres, Reg. No. 43,606; Nancy J. Flint, Reg. No. 46,704; Christopher J. Forstner, Reg. No. 46,049; Charles F. Hollis, III, Reg. No. 40,650; Nancy J. Jensen, Reg. No. 45,913; Betsy L. Johnson, Reg. No. 55,305; Laba Karki, Reg. No. 55,317; David A. Kelly, Reg. No. 53,106; Robert C. Lampe, III, Reg. No. 51,914; Jeffrey S. Leaning, Reg. No. 51,184; Ryan S. Loveless, Reg. No. 51,970; Tyler Maddry, Reg. No. 40,074; J. Michael Martinez, Reg. No. 37,178; David H. Milligan, Reg. No. 42,893; James R. Miner, Reg. No. 40,444; Bryan F. Moore, Reg. No. 52,044; Jeffrey T. Perez, Reg. No. 52,110; Michael P.F. Phelps, Reg. No. 48,654; John P. Pinkerton, Reg. No. 28,746; Laurence H. Posorske, Reg. No. 34,698; Andrew J. Ririe, Reg. No. 45,597; Stephen T. Schreiner, Reg. No. 43,097; Robert M. Schulman, Reg. No. 31,196; Thomas J. Scott, Jr., Reg. No. 27,836; Yisun Song, Reg. No. 44,487; Shelley L. Spalding, Reg. No. 51,971; Rodger L. Tate, Reg. No. 27,399; Samson Vermont, Reg. No. 42,202; Robert J. Ward, Reg. No. 28,746; and Scott F. Yarnell, Reg. No. 45,245.


All correspondence and telephone communications should be addressed to:

**CUSTOMER NUMBER 21967**

Robert M. Schulman  
Intellectual Property Department  
Hunton & Williams LLP  
1900 K Street, N.W.  
Suite 1200  
Washington, DC 20006-1109  
(202) 955-1500 (telephone)  
(202) 778-2201 (facsimile)

Dated: March 12, 2004

By:

  
Name: Karl S. Dahlquist  
Title: Assistant Secretary for  
**SDGI Holdings, Inc.**

## ASSIGNMENT

WHEREAS, **MEDTRONIC SOFAMOR DANEK, INC.**, a corporation organized under the laws of the State of Indiana, having a place of business located at 1800 Pyramid Place, Memphis, TN 38132, (hereinafter "ASSIGNOR"), owns the rights to certain new and useful improvements in and to the subject matter of:

### **DRILL HEAD FOR USE IN PLACING AN INTERVERTEBRAL DISC DEVICE**

described in an application for United States Letters Patent filed on October 6, 1997, and accorded Application Serial No. 08/944,234, Publication No. 2002/0151901;

AND, WHEREAS, **SDGI HOLDINGS, INC.** a corporation organized under the laws of the State of Delaware, having a place of business located at 300 Delaware Avenue, Suite 508, Wilmington, DE 19801, (hereinafter "ASSIGNEE"), is desirous of acquiring certain rights to the improvements and under the application;

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) or the equivalent thereof, and other good and valuable consideration, receipt of which is hereby acknowledged, ASSIGNOR does hereby sell, assign and transfer unto said ASSIGNEE, its successors, assigns and legal representatives, its entire right, title and interest in and throughout the United States of America (including its territories and dependencies) and all countries foreign thereto in and to said improvements, said United States application, any other United States applications, including provisional, divisional, renewal, substitute, continuation, reexamination and reissue applications, based in whole or in part on said United States application or in whole or in part on said improvements, any foreign applications, including international and regional applications, based in whole or in part on any of the aforesaid United States applications or in whole or in part on said improvements, and in and to any and all letters patent, including extensions thereof, of any country which have been or may be granted on any of the aforesaid applications or on said improvements or any parts thereof;

AND ASSIGNOR hereby authorizes and requests its agents, Hunton & Williams LLP, whose address is 1900 K Street, N.W., Suite 1200, Washington, DC 20006-1109, to insert hereon any identification necessary or desirable for recordation of this document, including the filing date and application number of said application when known.

AND ASSIGNOR hereby agrees for itself, and its heirs, executors and administrators to execute without further consideration any further documents and instruments which may be necessary, lawful and proper in the prosecution of said above-referenced application or in the preparation or prosecution of any continuing, substitute, divisional, renewal, reexamination or reissue application or in any amendments, extensions or interference proceedings, or other applications for patents of any region or country, that may be necessary to secure to ASSIGNEE its interest and title in and to said improvements or any parts thereof, and in and to said several patents or any of them;

AND ASSIGNOR hereby covenants for itself and its legal representatives, and agrees with said ASSIGNEE, its successors and assigns, that it has granted no right or license to make, use, sell or offer to sell said improvements, to anyone except said ASSIGNEE, that prior

to the execution of this deed, its right, title and interest in said improvements had not been otherwise encumbered, and that ASSIGNOR has not and will not execute any instrument in conflict therewith;

AND ASSIGNOR does hereby authorize and request the Director of the United States Patent and Trademark Office to issue any and all letters patent which may be granted upon said United States applications, or upon said improvements or any parts thereof when granted, to said ASSIGNEE.

IN WITNESS WHEREOF, ASSIGNEE hereunto sets its hand and seal.

Date \_\_\_\_\_

3/9/04

Todd N. Sheldon

**Vice President and Senior Legal Counsel**  
**Medtronic Sofamor Danek, Inc**

County of Shelby

)

**SS:**

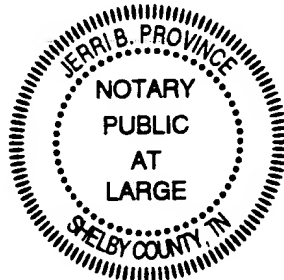
State of Tennessee

)

On this 9th day of March, 2004, before me a Notary Public in and for the County and State aforesaid, personally appeared Todd N. Sheldon, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Vice President and Senior Legal Counsel of Medtronic Sofamor Danek, Inc., a corporation, and that he as such officer, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself as such officer.

WITNESS my hand and Official Seal at office this the 17th day of March, 2004.

(SEAL)



**Notary Public**

## My Commission Expires

8/21/07

**HUNTON & WILLIAMS LLP**  
**INTELLECTUAL PROPERTY DEPARTMENT**  
**1900 K STREET, N.W.**  
**SUITE 1200**  
**WASHINGTON, DC 20006-1109**  
**(202) 955-1500 (TELEPHONE)**  
**(202) 778-2201 (FACSIMILE)**

**EXHIBIT B**

RECEIVED  
INDIANA SECRETARY  
OF STATE

2002 OCT 11 PM 2:05

**ARTICLES OF MERGER**

**OF**

**SPINAL DYNAMICS CORPORATION**  
(hereinafter "the nonsurviving corporation")

**INTO**

**MEDTRONIC SOFAMOR DANEK, INC.**  
(hereinafter "the surviving corporation")

**ARTICLE I - SURVIVING CORPORATION**

Section 1: The name of the corporation surviving the merger is Medtronic Sofamor Danek, Inc., and such name has not been changed as a result of the merger.

Section 2: The surviving corporation is a domestic corporation existing pursuant to the provisions of the Indiana Business Corporation Law, incorporated on May 13, 1983.

**ARTICLE II - NONSURVIVING CORPORATION**

Section 1: The name and state of incorporation of the corporation other than the surviving corporation that is party to the merger is as follows:

Name: Spinal Dynamics Corporation  
State of Domicile: Delaware

**ARTICLE III - PLAN OF MERGER**

The Agreement and Plan of Merger, as amended (the "Plan of Merger"), containing such information as required by Indiana Code 23-1-40-1(b), is set forth in "Exhibit A", attached hereto and made a part hereof.

**ARTICLE IV - MANNER OF ADOPTION  
AND VOTE OF SURVIVING CORPORATION**

The Plan of Merger was approved and adopted by the Board of Directors of the surviving corporation by unanimous written consents executed on June 27, 2002 and October 10, 2002.

The Plan of Merger was approved and adopted by the shareholders of the surviving corporation by unanimous written consents executed on June 27, 2002 and October 10, 2002, each consent signed by all shareholders entitled to vote.

#### ARTICLE V - MANNER OF ADOPTION AND VOTE OF NONSURVIVING CORPORATION

The Plan of Merger was approved and adopted by the Board of Directors of the nonsurviving corporation during meetings held on June 26, 2002 and October 10, 2002.

The Plan of Merger was approved and adopted by a vote of the stockholders of the nonsurviving corporation during a meeting called by the Board of Directors and held on October 11, 2002. The designation, number of outstanding shares, number of votes entitled to be cast, number of votes represented at the meeting, number of votes in favor and number of votes against with respect to each voting group entitled to vote separately on the merger are set forth below:

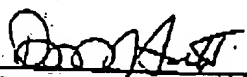
	<u>Common/Preferred Shares Voting Together</u>	<u>Preferred Shares Voting Separately</u>
Number of Outstanding Shares	16,097,429	12,269,998
Number of Votes Entitled to be Cast	16,097,429	12,269,998
Number of Votes Represented at Meeting	15,470,679	11,769,998
Number of Votes in Favor	15,470,679	11,769,998
Number of Votes Against	-0-	-0-

#### ARTICLE VI - COMPLIANCE WITH LAW AND ORGANIZATIONAL DOCUMENTS

The manner of adoption and approval of the Plan of Merger complied with the Indiana Business Corporation Law and with the charter and bylaws of each of the surviving corporation and the nonsurviving corporation.

In Witness Whereof, the undersigned, being the Vice President & Secretary of the surviving corporation, executes these Articles of Merger and verifies, subject to penalties of perjury, that the statements contained herein are true, this 11<sup>th</sup> day of October, 2002.

MEDTRONIC SOFAMOR DANEK, INC.



Name: David J. Scott  
Title: Vice President & Secretary

#2704306



**EXHIBIT A**

**Plan of Merger**

**See Tabs 4 & 5**

**AGREEMENT AND PLAN OF MERGER  
BY AND AMONG  
MEDTRONIC, INC.,  
MEDTRONIC SOFAMOR DANEK, INC.,  
MSD MERGER CORP.  
AND  
SPINAL DYNAMICS CORPORATION**

**June 27, 2002**

## TABLE OF CONTENTS

<b>ARTICLE 1 DEFINITIONS</b>	1
1.1 Specific Definitions	1
1.2 Definitional Provisions	10
<b>ARTICLE 2 THE MERGER; CONVERSION OF SHARES</b>	11
2.1 The Merger	11
2.2 Effective Time	12
2.3 Conversion of Shares	13
2.4 Election Procedures	14
2.5 Selection of Stock	16
2.6 100% Cash Election by the Company	16
2.7 Dissenting Shares	16
2.8 Exchange of Company Common Stock	19
2.9 Exchange of Merger Subsidiary Common Stock	20
2.10 Stock Options and Warrants	21
2.11 Capitalization Changes	21
2.12 Certificate of Incorporation of the Surviving Corporation	21
2.13 Bylaws of the Surviving Corporation	21
2.14 Directors of the Surviving Corporation	21
2.15 Assignment of Escrow Interests	21
<b>ARTICLE 3 CLOSING</b>	22
3.1 Time and Place	22
3.2 Filings at the Closing	22
<b>ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE COMPANY</b>	22
4.1 Listing of Certain Assets and Data	22
(a) Real Property	22
(b) Equipment	23
(c) Patents, Trademarks, Formulas, Etc	23
(d) Certain Leases, Agreements, Etc	24
(e) Permits, Licenses, Etc	24
(f) Banks and Depositories	24
(g) Loans and Credit Agreements, Etc	24
(h) Insurance Policies and Claims	24
(i) Certain Employees	25
(j) Employee Plans	25
(k) Powers of Attorney	25
(l) Taxes	25
4.2 Organization	26
4.3 Authorization	26
4.4 Capitalization	27
4.5 Financial Statements	27
4.6 Absence of Undisclosed Liabilities	28
4.7 Consents and Approvals	28
4.8 Compliance with Laws	29
4.9 Litigation	29

4.10	Absence of Material Adverse Changes .....	29
4.11	Taxes .....	29
4.12	Contracts .....	30
4.13	Intellectual Property Rights .....	30
4.14	Assets .....	31
4.15	Status of Bryan Cervical Disc System.....	32
4.16	Accounts Receivable .....	32
4.17	Inventories.....	32
4.18	Warranties .....	32
4.19	Insurance Policies .....	33
4.20	Labor Agreements .....	33
4.21	Benefit Plans .....	33
4.22	Contracts with Related Parties.....	34
4.23	Relations with Suppliers.....	35
4.24	Product Liability Claims.....	35
4.25	Environmental Matters .....	35
4.26	Business and Marketing Plans.....	36
4.27	Absence of Certain Business Practices.....	36
4.28	Minute Books.....	36
4.29	No Finders.....	36
4.30	Proxy Statement.....	36
4.31	State Takeover Laws.....	36
4.32	Merger Filings.....	36
4.33	Agreements to Facilitate .....	37
4.34	Disclosure .....	37
4.35	Conversion of Preferred Stock Prior to Effective Time.....	37

#### ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF PARENT, MSD AND MERGER SUBSIDIARY.....

5.1	Organization.....	37
5.2	Authorization .....	38
5.3	Capitalization .....	38
5.4	Consents and Approvals .....	38
5.5	Reports; Financial Statements; Absence of Changes.....	39
5.6	Registration Statement.....	39
5.7	No Finders.....	40
5.8	Reorganization .....	40
5.9	Merger Filings.....	40

#### ARTICLE 6 COVENANTS .....

6.1	Conduct of Business of the Company .....	40
6.2	Conduct of Business of Parent.....	43
6.3	No Solicitation .....	43
6.4	Access and Information .....	44
6.5	Approval of Company's Stockholders; Proxy Statement; Registration Statement.....	45
6.6	Third Party Consents .....	47
6.7	Company Affiliates' Letters .....	47
6.8	Expenses .....	48
6.9	Further Actions .....	48
6.10	Regulatory Approvals.....	48

6.11	Certain Notifications .....	49
6.12	Voting of Shares .....	49
6.13	NYSE Listing Application .....	49
6.14	Indemnification of Company Officers and Directors .....	49
6.15	Benefit Plans and Employee Matters .....	50
6.16	Obligations of Merger Subsidiary .....	51
6.17	Qualification of Merger as a Reorganization .....	51
6.18	Noncompetition Agreements .....	51
6.19	Escrow Agreement .....	51
6.20	Stockholder Notes .....	51
6.21	Calculation of Merger Shares .....	52
6.22	Bryan Cervical Disc System .....	52
6.23	Medtronic Voting Agreement .....	52
<b>ARTICLE 7 CLOSING CONDITIONS .....</b>		<b>52</b>
7.1	Conditions to Obligations of Parent, Merger Subsidiary, and the Company .....	52
7.2	Conditions to Obligations of Parent and Merger Subsidiary .....	53
7.3	Conditions to Obligations of the Company .....	54
<b>ARTICLE 8 TERMINATION AND ABANDONMENT .....</b>		<b>55</b>
8.1	Termination .....	55
8.2	Effect of Termination .....	56
<b>ARTICLE 9 INDEMNIFICATION .....</b>		<b>56</b>
9.1	Escrow Fund; Survival .....	56
9.2	Indemnification Obligations .....	59
9.3	Limitations on Amount .....	60
9.4	Payments to Parent .....	60
9.5	Procedures for Indemnification .....	61
9.6	Non-Exclusive Remedy .....	61
9.7	Tax Treatment .....	62
<b>ARTICLE 10 MISCELLANEOUS .....</b>		<b>62</b>
10.1	Amendment and Modification .....	62
10.2	Waiver of Compliance; Consents .....	62
10.3	Notices .....	62
10.4	Assignment .....	64
10.5	Governing Law .....	64
10.6	Counterparts .....	64
10.7	Interpretation .....	64
10.8	Publicity .....	64
10.9	Entire Agreement .....	65
10.10	Severability .....	65
10.11	Specific Performance .....	65
10.12	Stockholders' Representatives .....	65

EXHIBITS:

- Exhibit A: Form of Certificate of Incorporation
- Exhibit B: Form of Company Affiliate's Letter
- Exhibit C: Form of Agreement to Facilitate Merger
- Exhibit D: Form of Noncompetition Agreement
- Exhibit E: Form of Escrow Agreement
- Exhibit F: Key Employee List
- Exhibit G: Legal Opinion of the Company's Counsel
- Exhibit H: Certificates Supporting Tax Opinion
- Exhibit I: Legal Opinion of Parent's Counsel

Company Disclosure Schedule  
Parent Disclosure Schedule

## AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT is dated as of June 27, 2002, by and among **Medtronic, Inc.**, a Minnesota corporation ("Parent"), **Medtronic Sofamor Danek, Inc.**, an Indiana corporation and a wholly owned subsidiary of Parent ("MSD"), **MSD Merger Corp.**, a Delaware corporation and wholly owned subsidiary of Parent ("Merger Subsidiary"), **Spinal Dynamics Corporation**, a Delaware corporation (the "Company"), and, with respect to Article 9 and Section 10.12, Vincent A. Bryan, Charles R. Clark and Frank Fischer, as agents and attorneys-in-fact for the Company Stockholders pursuant to Section 10.12 below (the "Stockholders' Representatives").

WHEREAS, the Boards of Directors of Parent, MSD, Merger Subsidiary and the Company deem it advisable and in the best interests of each corporation and their respective stockholders that Parent and the Company combine their respective businesses in order to advance the long-term business interests of Parent and the Company; and

WHEREAS, the combination of Parent and the Company shall be effected by the terms of this Agreement through a transaction in which either (i) the Company will merge with and into MSD, with MSD continuing as the surviving corporation and a wholly owned subsidiary of Parent, or (ii) Merger Subsidiary will merge with and into the Company, with the Company continuing as the surviving corporation and a wholly owned subsidiary of Parent (the "Merger"); and

WHEREAS, for federal income tax purposes, it is intended that the Merger, if effected pursuant to Section 2.1(a), shall qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended; and

WHEREAS, the Boards of Directors of Parent, MSD, Merger Subsidiary and the Company have approved the Merger upon the terms and subject to the conditions set forth herein; and

WHEREAS, the parties hereto desire to make certain representations, warranties and agreements in connection with the Merger and also to prescribe various conditions to the Merger;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual representations, warranties, covenants, and agreements contained herein, the parties hereto agree as follows:

### ARTICLE 1 DEFINITIONS

1.1 Specific Definitions. As used in this Agreement, the following terms shall have the meanings set forth or as referenced below:

"Adjusted Average Market Price" means the Unadjusted Average Market Price; provided, however, that (i) if the Unadjusted Average Market Price is less than \$42.00, the



spare parts, vehicles and other similar property and assets owned, leased or otherwise used by the Company, specifically identifying and describing those items with an original cost to, or total lease payments by, the Company in excess of \$5,000, setting forth with respect to all such listed property a summary description of all Liens relating thereto (other than liens for taxes due but not yet payable), identifying the parties thereto, the rental or other payment terms, expiration date and cancellation and renewal terms thereof. Prior to the date of this Agreement, the Company has delivered to Parent true and complete copies of all currently effective leases, conditional sales agreements or other similar documents concerning the items listed in Section 4.1B of the Company Disclosure Schedule.

(c) Patents, Trademarks, Formulas, Etc. Section 4.1C of the Company Disclosure Schedule sets forth a list of all of the Company's patents, patent applications, invention disclosures currently being reviewed by outside counsel for which a patent application file has been opened but the application is unfiled, applications and registrations for trademarks, service marks and copyrights, including those which are owned by or licensed to the Company, and any licenses pursuant to which any of the foregoing is used (other than customary end-user license agreements for commercially available software). Prior to the date of this Agreement, the Company has delivered to Parent true and complete copies of all issuances, registrations, applications and certificates regarding such intellectual property, true and complete copies of all contracts with employees or others relating in whole or in part to disclosure, assignment or patenting of inventions or discoveries, confidential or proprietary information, product formulas or other categories of know-how, and has delivered to Parent true and complete copies of all patent, trademark, trade name, copyright, trade secret or other intellectual property licenses granted at any time by or to the Company.

(d) Certain Leases, Agreements, Etc. Section 4.1D of the Company Disclosure Schedule sets forth a list (including, in the case of oral arrangements, a written description of all material terms thereof) of each lease, contract, agreement or other commitment, written or otherwise, to which the Company is a party (other than leases, contracts, agreements or commitments furnished pursuant to other paragraphs of this Section 4.1) and which is in any material respect not yet fully performed, involving:

(i) The purchase of any services, raw materials, supplies or equipment, exclusive of purchase orders for the purchase of products or services required involving payment of less than \$20,000 in the aggregate for similar items;

(ii) The sale of assets, products or services involving a value estimated at more than \$10,000 or any contract for provision of service warranties, sales credits, product returns, or discounts, warehouse allowances, advertising allowances or promotional services; or

(iii) any distributor or sales representative or similar broker, dealer or agent of the Company's products.



## Section 4.1C

## Patents, Trademarks, Formulas, Etc.

## Pending Patent Applications:

PUBLICATION OR APPLICATION NUMBER	TITLE	REGION
08/944234	Drill Head for Use in Placing an Intervertebral Disc Device	United States